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JAGARNATH & Co. v. CRESSWELL AND OTHERS.

IMAM J.

there were 19 days of hearing. Of these, on an examination of the record, I assess four days to have been spent on account of the joinder of the claim for damages, and the costs of hearing of these days the plaintiff must pay to the defendants, while the latter must pay to the former the costs of 14 days of the hearing, the costs of one further day occasioned by the adjournment being payable to the defendants from the plaintiff. There will be the usual set-off between the parties. The defendants will get only one set of costs between them. The costs will be on scale No. 2.

Attorney for the plaintiffs: *S. C. Mukerjee.*

Attorneys for the defendants: *Leslie & Hinds*, and *Sutcliffe.*

C. B.

ORIGINAL CIVIL.

Before Fletcher, J.

1913

April 8.

PROSAD CHUNDER DE

v.

CORPORATION OF CALCUTTA.*

Municipal Corporation—Chairman—General Committee—Building-plans, refusal of sanction of—Calcutta Municipal Act (Beng. III of 1899), ss. 375, 377—Action for mandamus or damages whether maintainable—Specific Relief Act (I of 1877), s. 45.

Where plans for building have been rejected by the Chairman and the General Committee of the Calcutta Municipal Corporation, no suit is maintainable to have the plans approved or for damages. If the Chairman and General Committee have acted honestly and within their authority, their

* Original Civil Suit No. 205 of 1912.

decision cannot be reviewed by any Court. If the plans have been rejected *mala fide* the only remedy is by an application under s. 45 of the Specific Relief Act, or an order to compel the Chairman and the General Committee to hear the matter in the manner provided by law.

Davis v. *Bromley Corporation* (1) and *Smith* v. *Chorley Rural Council* (2) followed.

London and North Western Railway v. *Westminster Corporation* (3) referred to.

ORIGINAL SUIT.

This suit was instituted by Prosad Chunder De and his brother against the Corporation of Calcutta, the Chairman and the General Committee of the Corporation, the substantial relief prayed for being damages for the alleged wrongful refusal of sanction of a certain building scheme

The plaintiffs were the owners of a parcel of vacant land known in 1910 as No. 25-1, Jannagore Road, now known as No. 1, Linton Street, situate in the 24-Parganas, but within the municipal limits of Calcutta. With a view to erecting a building on this land the plaintiffs applied to the Corporation of Calcutta on the 14th September, 1910, for a plan of the road alignment in that quarter and were duly supplied, on the 22nd October 1910, with a plan of the alignment, which had been prescribed under section 350 of the Calcutta Municipal Act.

The plaintiffs prepared plans, keeping their proposed building clear of this road alignment, and on the 7th December, 1910, duly submitted their plans in triplicate to the Corporation for approval of the site and sanction to erect their building.

On the 9th January, 1911, two of the three plans were returned to the plaintiffs with a letter, dated the 6th January, 1911, from the District Building Surveyor

(1) [1908] 1 K. B. 170. (2) [1897] 1 Q. B. 678.
(3) [1904] 1 Ch. 759.

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of District III, intimating that sanction was refused on the ground that "the proposed building falls on the prescribed road line, section 352," this alleged prescribed road line being marked on the plans by the Building Surveyor.

It appears that at the time of the submission of the plans, a plan was being prepared of a new projected road, which would cut through the site of the proposed new building, and it was in consequence of this that the plaintiffs were refused sanction, although at the time the sanction of the General Committee had not been obtained to the new projected road.

On the 17th January, the plaintiffs re-submitted their plans to the Building Surveyor, drawing to his attention that the road line marked by him on their plans had not been sanctioned by the General Committee.

The fresh alignment was, in fact, not sanctioned by the General Committee until the 20th January.

On the 14th February, the plans were returned to the plaintiffs, sanction being again refused on the same ground, with a note from the Building Surveyor to the effect that the alignment had been sanctioned by the General Committee. On making further enquiries the plaintiffs were informed, on the 4th March, that the fresh alignment had been sanctioned under section 356 of the Municipal Act, and hence it was unnecessary for the General Committee to give any public notice of their intention to align, and, on the 7th April, the plaintiffs were informed by the Building Surveyor that the projected public street was sanctioned by the General Committee on the 20th January.

On the 11th April, the plaintiffs wrote to the Deputy Chairman, pointing out, (i) that the fresh alignment could not be properly made under section 356, which contemplates the opening out of new roads,

but had to be made under section 350, which refers to the widening or improvement of existing roads, and, (ii) that sanction to build had been improperly refused, as on the date of the refusal the fresh alignment had not been sanctioned by the General Committee. The plaintiffs concluded by praying that their appeal may be placed before the Appeals Sub-Committee and decided in their presence.

On the 8th May, the plaintiffs requested the Chairman to enquire into the matter and to cause their plans to be sanctioned, but the Chairman refused to interfere as the matter was pending before the Appeals Sub-Committee.

On the 29th June, it was decided by the Appeals Sub-Committee that the petition for appeal was time barred under section 621 of the Calcutta Municipal Act.

On the 7th July, the plaintiffs presented a petition to the Chairman and the members of the General Committee, contending that the period of limitation under section 621 should be taken to run as from the 7th April, and praying for an order of remand to the Appeals Sub-committee.

The decison of the Appeals Sub-committee was subsequently confirmed by the General Committee.

After a further infructuous petition to the Chairman and the members of the General Committee, on the 2nd November, 1911, the plaintiffs gave notice of suit under section 634 of the Calcutta Municipal Act.

On the 29th February, 1912, this suit was instituted.

The plaintiffs charged the Chairman and the General Committee with acting in an illegal, harsh and arbitrary manner and with *mala fides* in refusing sanction, and alleged that by reason of such action they had suffered damage which they assessed at Rs. 1,200.

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The reliefs prayed for were, *inter alia*, (i) a declaration that the plaintiffs were and are entitled to have their application of the 7th December, 1910, for approval of site and for permission to build a masonry house thereon sanctioned, and for a decree that the application be sanctioned, (ii) a declaration that the plaintiffs are entitled to build on the premises No. 1, Linton Street, according to their plan, and (iii) the sum of Rs. 1,200 as damages.

On the 30th April, 1912, the plaintiffs were informed by the Deputy Chairman that the General Committee had abandoned the projected public street and the Chairman had ordered sanction to be issued to the plaintiffs' plans, and were requested to resubmit their plans for sanction. The plaintiffs declined to accept this offer without adequate compensation for the damage alleged to have been sustained by them.

A written statement was filed by the Corporation and the Chairman, wherein they alleged that they had "acted lawfully in good faith with due care and attention in the interest of public convenience in refusing sanction to the plan." It was objected that the General Committee, as such, could not be made a party to the suit.

Mr. C. C. Ghose (*Mr. A. N. Chaudhuri* with him), for the plaintiffs. This action is properly maintainable. The defendants acted *mala fide*, inasmuch as they acted without jurisdiction and outside the scope of the Calcutta Municipal Act: see *London and North Western Railway* v. *Westminster Corporation* (1) per Vaughan Williams L. J. at p. 767, citing the definition of "*mala fides*" given by Lord Campbell. When acting without jurisdiction, the question of discretion does not arise. The refusal of sanction under section

(1) [1904] 1 Ch. 759.

377 was clearly *ultra vires* and without jurisdiction: *Robinson* v. *Local Board of Barton-Eccles* (1). The defendants purported to refuse sanction on the ground that the plans infringed an alleged prescribed road alignment. This alleged alignment was not operative at the time, as it had not received the sanction of the General Committee. Again the alignment could not legally be made under section 356, but ought to have been made under section 350, and public notice ought to have been given under section 350, sub-clause (*1*).

[FLETCHER J. Your proper remedy was by an application under section 45 of the Specific Relief Act, for a *mandamus*, or you could have gone on building, and if the Corporation called upon you to demolish, you would have had a good defence].

An action of *mandamus* lies: *The Queen* v. *Lambourn Valley Railway Company* (2). Acting against the provisions of a statute, is acting *mala fide*.

[FLETCHER J Not when there is a wrongful exercise of discretion. Besides you elected to proceed under section 375. Under section 375, sub-clause (*2*), the decision of the General Committee is final.]

But that clause does not oust the jurisdiction of the Court; a suit is maintainable: *Chairman of Giridhi Municipality* v. *Suresh Chandra Mazumdar* (3). The General Committee have been made defendants in the suit for greater safety, in view of the decision in *Bhoiaram Choudhury* v. *Corporation of Calcutta* (4), though the decision in a later case, *Baroda Prosad Roy Choudhry* v. *Corporation of Calcutta* (5), does not support the earlier authority. In any event, since the General Committee are not appearing, it does

(1) (1883) L. R. 8 A. C. 798.
(2) (1888) L. R. 22 Q. B. D. 463.
(3) (1908) 12 C. W. N. 709.
(4) (1909) I. L. R. 36 Calc. 671.
(5) (1911) 13 C. L. J. 611.

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not lie with the other defendants to take the plea. Section 617 has no application to the present matter, and the High Court is the proper *forum* for this suit.

Mr. Sircar, for the defendants, the Corporation and the Chairman. The plaint does not disclose any cause of action, and the suit is not maintainable. *Smith* v. *Chorley Rural Council* (1), and *Davis* v. *Bromley Corporation* (2) are conclusive on the point that no action will lie for a *mandamus*, where a municipal body has rejected plans. No specific act of bad faith is charged in the plaint against either the Chairman or the Corporation. The allegation against the General Committee is that the appeal was illegally dismissed: but the plaintiffs had submitted to the jurisdiction by their appeal. The General Committee have been wrongly added as defendants in the name of the "General Committee". From section 5, it is clear the General Committee have no corporate existence.

Mr. Ghose, in reply. A suit will lie against a municipal body where the exercise of authority has been capricious, wanton and oppressive: *Nagar Valab Narsi* v. *The Municipality of Dhanduka* (3).

FLETCHER J. This is a suit brought by Prosad Chunder De, and his brother against the Corporation of Calcutta, the first defendant, and against the Chairman of the Corporation, and also the General Committee of the Corporation. The first relief asked for is as follows: for a declaration that the plaintiffs were and are entitled to have their application of the 7th December, 1910, for approval of site and permission to build a house, sanctioned. The next relief asked for is a declaration that the plaintiffs are entitled to

(1) [1897] 1 Q. B. 678. (2) [1908] 1 K. B. 170.
(3) (1887) I. L. R. 12 Bom. 490.

build on No. 1, Linton Street according to the plan submitted. The next relief is for Rs. 1,200 as damages alleged to be suffered by the plaintiffs by reason of the sanction being refused. It seems to me quite obvious that a suit of this nature does not lie. The case is covered by the decision in *Davis* v. *Bromley Corporation* (1). In the course of the argument in that case counsel for the plaintiff argued that the decision in *London and North Western Railway* v. *Westminster Corporation* (2) was an authority that an action lies against a sanitary authority for breach of duty when it has acted from improper motives, and Bigham J made the remark, "there is no case of such an action as the present and it would obviously be dangerous to allow it, for it would then be open to every one whose plans had been rejected to bring an action". That seems to me to go to the root of the plaintiffs' suit. What is the claim against the Corporation? They allege in their plaint that they are the owners of a piece of land, and on the 7th November, 1910, they lodged with the Chairman of the Corporation certain plans for approval of their proposed masonry building intended to be erected on the property. The approval of the plans was refused by the Chairman, and the plaintiffs then filed an appeal against the decision of the Chairman to the General Committee. That appeal was rejected, it is said, on the ground that the appeal was barred by limitation, but the plaintiffs allege that the decision of the General Committee was illegal, harsh, arbitrary and *mala fide*. It is not stated on what ground, but in paragraph 14 of the plaint they make that general allegation. It seems to me in that case if the decision of the General Committee was illegal, harsh, arbitrary and *mala fide* the plaintiffs have no remedy against

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the defendants by regular suit. The whole of the statutory provisions governing the Corporation of Calcutta are opposed to any such remedy as the plaintiffs seek. From section 370 onwards the Calcutta Municipal Act contains provisions as to the approval of plans for intended buildings by the Chairman of the Corporation, and under section 375 not only is the Chairman made a sort of Court of first instance, but the statute set up a Court of Appeal, that is the General Committee, and these are the local tribunals who have to decide whether the plans did or did not comply with the provisions of the Calcutta Municipal Act.

It is obvious to my mind that so long as the Chairman and the General Committee acted honestly, their decision, provided it was not in excess of their authority under the Act, is not capable of being reviewed by any Court. The whole course of authority is against the decision of such a local tribunal being reviewed by the Civil Courts. The two authorities cited by Mr. Sircar, *Davis* v. *Bromley Corporation* (1) and *Smith* v. *Chorley Rural Council* (2), seem to establish clearly, first of all, that no suit lies against the Calcutta Corporation for wrongly refusing to approve of the building plans. That is the decision in *Davis* v. *Bromley Corporation* (1), and the decision in *Smith v. Chorley Rural Council* (2) is an authority for the proposition that a writ of *mandamus* does not lie against a local authority who in good faith refuses to pass building plans. If it had been done in bad faith, then the person whose plans had been rejected would have a remedy by way of a writ of *mandamus* to the local authority to proceed in the manner provided by law. In no case has the person a right of suit to have the plans approved, or for damages. These two decisions

(1) [1908] 1 K. B. 170. (2) [1897] 1 Q. B. 678.

apply in principle as much to the Calcutta Municipality as to local authorities under the Public Health Act. Therefore, in my opinion, a suit does not lie in this Court, by a person whose plans have been rejected by the Chairman and the General Committee, for a declaration that the plans comply with the terms of the Act and should therefore be approved. His only remedy if the plans have been rejected *mala fide* is an application under section 45 of the Specific Relief Act for an order to compel the Chairman and the General Committee to hear the matter in the manner provided by the law. In the face of these two authorities the plaint discloses no cause of action either against the Chairman of the Corporation or against the General Committee. Any right the plaintiff may have with reference to the illegal, harsh, arbitrary and *mala-fide* action, if he can establish the same, will be by coming to the Court under section 45 of the Specific Relief Act. It seems to me that the plaintiffs have sought the wrong remedy. I understand that since the institution of the suit the Corporation have granted leave to build. It is said that the projected new street has been abandoned. However that may be, that does not give the plaintiffs a right of action. It my opinion the plaint discloses no cause of action and the suit must be dismissed with costs.

Suit dismissed.

Attorney for the plaintiffs: *H. N. Datta.*

Attorney for the defendants, the Corporation and the Chairman: *M. L. Seal.*

J. C.